

DEC - 6 2002

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Rules and Regulations Implementing the  
Telephone Consumer Protection Act of 1991

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CG Docket No. 02-278  
CC Docket No. 92-90

To: The Commission

COMMENTS

Dennis C. Brown  
126/B North Bedford Street  
Arlington, Virginia 22201  
703/525-9630

Dated: December 6, 2002

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### Summary of the Filing

The Commission should amend its rules to provide effective protection of consumers from the abuses of telemarketers. Some telemarketers are disregarding or evading the requirements of the Telephone Consumer Protection Act and the Commission's Rules, while others are engaging in activities which clearly violate the TCPA and the Commission's Rules,

The Commission cannot hope to make company-specific do not call lists an effective protection of consumer privacy. The only effective do not call list will be a national list. The Commission should adopt a requirement for a national do not call data base, maintained by the local exchange carriers and paid for by telemarketers. Telemarketers should be required to access the data base immediately prior to each call and to pay the LECs for the service.

Predictive dialers cannot comply with the clear prohibitions of the TCPA and the Commission's Rules and should be flatly banned. The Commission should reconsider its interpretation of Section 227(b)(1)(D) of the TCPA to further protect consumers.

The current time of day restrictions subject consumers to essentially all day harassment. The Commission should substantially narrow the restrictions.

The Commission should not rely on Automatic Number Identification (Caller ID) to protect consumers from telemarketer abuses. Caller ID is of limited utility now and will become of less utility as nationwide ANI is fully built out.

The definition of "established business relationship" should be narrowed. A business relationship which includes a willingness by the consumer or business to receive unsolicited telemarketing calls and faxes should be established only by a written expression by the consumer.

The Commission must keep pace with evolving technology. The Commission should reinterpret Section 227(b)(1)(C) of the TCPA to include within the definition of "telephone facsimile machine" any computer which is connected to a telephone line.

The Commission should adopt only rules which it is prepared to enforce in individual cases. To reduce its enforcement burden, the Commission should adopt rules which are more broadly effective than its current TCPA rules.

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COMMENTS

I, Dennis C. Brown, have practiced telecommunications law before the Commission for 24 years. These comments are on my own behalf, as a mere consumer of telephone service, and not on behalf of any client.

As the Commission must conclude from the increase in the number of complaints that it has received, the Commission's Rules are not effective in preventing the harassment of telephone consumers by telemarketers. My principal concern is that the Commission adopt amended rules which will be effective. What I desire as a telephone consumer is very simple. I desire to be able either to answer one telephone call, or make a single telephone call, or go to a certain web site once, or mail one postcard at someone else's expense and be free of all covered commercial telemarketers for the next ten years. I desire never again to receive a facsimile advertisement sent to my computer which is connected to a telephone line. Make that happen and I will be a happy telephone consumer.

In its consideration of the above captioned matter, the Commission should focus its attention on the sole purpose of the Telephone Consumers Protection Act (TCPA) which is to protect consumers from the assaults of, among others, telemarketers. The purpose of the TCPA is not to provide any protection, whatsoever, to telemarketers. While there are limited constitutional protections for commercial speech, the Commission is charged by the TCPA with protecting consumers.

#### The Extent of the Problem

I shall briefly relate my recent anecdotal experience. Since the release of the Commission's Notice of Proposed Rule Making in the above captioned matter, I have received an average of one commercial telemarketing call per day to my residential telephone line. During that time, I have also received an average of one abandoned call per day and approximately one blatantly unlawful call per week. My mechanical fax machine has been hit by someone testing for a fax tone approximately twice per week, obstructing its use for legitimate communications. I have also received an unsolicited commercial fax message during that time and I have received countless unsolicited facsimiles of advertising matter via e-mail.

I routinely interrupt telemarketers to request that I be put on their do not call lists. In one recent incident, the caller told me that it might take as long as ten days for my name to be put on the list and that I might receive additional calls during that time. Most recently, the caller demanded to know why I desired to be place on the list. In numerous incidents, the teleinarketer

has agreed to put me on its list, but continued with the sales pitch until I hung up. In some instances, they have simply hung up without acknowledging my request.’

In several instances, the telemarketer has begun by asking, “Is this a residence or a business?” When I ask, “Who wants to know?” they hang up, neither identifying themselves nor giving me the opportunity to be put on their do not call list. Since, when they dial, they do not know whether or not they are calling a residential number, they are obviously indifferent to whether they are complying with the TCPA and Commission’s Rules governing calls to residential telephones.

Although Section 47 U.S.C. §227(b)(1)(C) of the TCPA clearly and unambiguously prohibits the initiation of “any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party,” beginning in early 2002, I have received an average of one such unlawful call per week. These prerecorded calls typically begin, “Hi, neighbor. We’re in your area offering special prices on . . . . For more information, dial NPA-NXX-XXXX.” While some such calls provide a phone number to call to be put on a do not call list, or provide an opportunity to press a digit to be put on a list, that does not exempt such calls from the plain prohibition on the use of prerecorded messages. It would appear that some telemarketers which use prerecorded voice messages are attempting to evade the requirement for maintaining a do not call list by using one corporation to

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<sup>1</sup> In one instance, as she was hanging up, I overheard the telemarketer exclaim, “Another [exhaust orifice]!”

make the call and a different corporation to provide human interaction with the recipients of calls. One recent prerecorded call invited me to press a digit for more information. I pressed the digit and when a human being answered, I asked to be put on the do not call list. The call girl's response was that her firm did not originate the call and that she could not put me on the list. She refused to tell me who had originated the call.'

At least one internet marketer is attempting to capitalize on the public's desire not to be harassed by telemarketers. See Exhibit I hereto, which is a "spam" e-mail message offering to place the me on a "national telemarketing no-call list". I, of course, would have no intention of doing business with a company which falsified the date of the sending of the message so as to avoid its immediate deletion, provided no subject header, and clearly was seeking to gather marketing information and charge me for its pleasure. This unsolicited facsimile advertising message, transmitted to my computer which is connected to a telephone line, demonstrates the need for a legitimate, national, single-entry do not call list.

#### Company Suecific Lists

The Commission cannot hope to make company-specific do not call lists effective. **At** the cost of a few hundred dollars each, a telemarketer can create countless corporations and continue to annoy the same consumers. Only a national, single-entry do not call system can protect consumers. If, however, the Commission decides to continue the use of company-specific lists,

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<sup>2</sup> I resisted the urge to release upon her the type of invective which I scream at the prerecorded messages.

the Commission should require the telemarketer to send a certified letter, return receipt requested, by United States Mail to each consumer who requests placement on the list confirming that the consumer has been placed on the do not call list of that company and on the lists of all affiliated and subsidiary companies. The telemarketer should be required to maintain the return receipts for ten years.

### Predictive Dialers and Autodialers

Predictive dialers, which dial numbers but then abandon some calls, should be flatly banned by the Commission's Rules, because they are flatly banned by the TCPA. They clearly violate the TCPA and the Commission's Rules because abandoned calls neither identify their source nor provide an opportunity for the recipient to demand to be placed on a do not call list. There is really no alternative to banning their use for calls to residential phone lines, because the teleinarketer cannot comply with the TCPA by providing an identifying message for abandoned calls by means of artificial or prerecorded voice.<sup>3</sup>

### Answering Machines

A call to a number which is connected to an answering machine is clearly unlawful because it does not give the consumer the opportunity to demand that the number be placed on the telemarketer's do not call list. A consumer should not have to bear the burden of making a

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<sup>3</sup> Predictive dialers are especially frustrating for me because I can't take the risk of swearing into dead air, because it may be a call from a desired caller whose audio in my direction has been lost in transit.



responsive telephone call to be placed on a do not call list. Because such calls are clearly unlawful, the Commission's Rules should expressly prohibit the making of any covered telemarketing call to a number which is connected to an answering machine.<sup>4</sup>

#### Time of Day Restrictions

The Commission should more narrowly limit the period of time during which telemarketing calls may be made. The current period subjects the hapless consumer to essentially all day harassment. The consumer cannot safely sleep late, go to bed at an early hour, eat lunch or dinner, or even take a weekend afternoon nap without fear of interruption. Limiting the period to 11:00 am to 11:01 am, recipient's local time, Monday through Friday, should provide a reasonable balance between protecting the commercial speech of telemarketers and carrying out what the Commission recognizes as its primary responsibility under the TCPA, the protection of consumers from commercial telemarketers. If the FTC did not adopt the same time period limitation, there would be no conflict. The telemarketer would simply have to comply with the narrower restriction, but would not violate the other agency's broader restriction.

#### Network Technologies

The Commission should not rely on automatic number identification (ANI) to provide any protection for consumers. Because the consumer cannot know and block all of the telephone

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<sup>4</sup> I am not unaware of the practical difficulty which this prohibition places on a telemarketer, but such calls are clearly unlawful and the TCPA places the burden for preventing such calls solely on the telemarketer.

numbers used by telemarketers, a consumer can avoid telemarketing calls only by subscribing at one's own expense to Caller ID and not answering calls which are identified as "out of area". To do so, the consumer must take the risk of not answering a desired call. (I am outside the NPA of my 84 year old Mother. Because she won't answer an out of area call, I can't call her without first arranging for the call via e-mail or through someone else in her community.) Today, Caller ID does not allow the consumer to avoid calls from telemarketers within the same NPA. When ANI is fully implemented and the originating number is provided nationwide, the consumer will not even be able to ignore calls based on their being out of area.

Of no small significance, the use of Caller ID does not prevent my Mother from having to rise from her richly earned retirement in response to the ringing of the phone to check the Caller ID display. The Commission should recognize that, to an increasingly elderly consumer public, the harm of telemarketing may be as much in the ringing of the telephone instrument as in the nature of the message delivered, if any. Although it cannot rely on ANI to reduce the harassment of consumers, to fulfill the objectives to the TCPA, the Commission needs to severely restrict the number of times that the consumer's phone is rung by telemarketers.

#### National Data Base Reanirement

While the Commission should adopt a national data base requirement, the data base need not be maintained on a nationwide basis. The most practical and effective means of providing a do not call list is for the Commission to require the local exchange carriers to maintain the list electronically. By its requirement that the Commission evaluate telephone network technologies

and special directory markings and any other alternatives, Section 227(c)(1) provides jurisdiction for the Commission to impose such a requirement on the LECs. An effective system will have the LEC maintain the data base for its subscribers. The LEC is the best positioned entity to update the data base continuously and automatically to remove a number when a person is no longer a subscriber and to change the data base to reflect a change of a subscriber's number. The Commission should require the former subscriber's data base listing to be transferred to a new LEC in the same area as part of Local Number Portability. When a subscriber moves to a different LEC's service and uses a different telephone number, the old LEC should be required to forward the do not call listing to the subscriber's new LEC for association with the consumer's new number.

The Commission should require a telemarketer to access the LEC's data base electronically, immediately prior to each telemarketing call. The data base would not be sold or even made available in bulk or distributed in any way, rather, the telemarketer would dial into the LEC's data base immediately prior to each telemarketing call. (Alternatively, the telemarketer could arrange with each LEC for continuous on-line access, rather than dialing in for each call.) To retain telephone subscriber privacy, the telemarketer should be required not to retain any record of the fact that the telephone number was on a do not call list. The Commission should allow the LEC to earn a fully compensatory return by charging the telemarketer for each access of the data base.

The means suggested above would be fully responsive to the concerns expressed by the Commission in its 1991 decision not to require a national data base. Establishment of the suggested form of data base would not be difficult or costly and it would cost federal and state governments and consumers nothing. Changes in the data would be made automatically as a byproduct of the LEC's handling of its subscribers' service orders. Regional telemarketers would not be required to purchase a nationwide data base. Costs would not be passed on to consumers except as the cost of all advertising is distributed among buying consumers by the providers of advertised goods and services. **All** that the telemarketer would be able to ascertain from the LEC-owned data base was that some unidentified person did not desire calls to a certain number. Therefore, there are no privacy concerns either in terms of either actual consumer privacy or the Privacy Act. The LEC would have no difficulty distinguishing automatically between residential and business consumers for purposes of eligibility for the do not call list.

To complete the national data base and make it effective, the Commission should require the registration with the Commission of commercial telemarketers, including each telephone number which the telemarketer uses and a listing of all subsidiary and affiliated entities, including the identities of independent and contract affiliates. The Commission should require the updating of registered telemarketing numbers daily, twenty-four hours in advance of using a new number. The registration data base should be made available to the public through the Universal Licensing System or a similar system. The registration would facilitate consumers' making well founded and well documented complaints to the Commission and to the courts and would facilitate the Commission's enforcement efforts.

The Commission should not be deterred in carrying out its responsibilities by contemplation of actions which the Federal Trade Commission may take. As the Commission recognizes, the FTC's proposals would not cover all of the telemarketers over which the Commission has authority. The Commission should proceed on its own in this matter, without regard to the FTC's proceeding. The FCC has in place with the FTC various memoranda of understanding concerning the areas of responsibility that each will take pursuant to statutes which provide dual or shared authority. The Commission should have no difficulty reaching an understanding with the FTC when its proceeding is concluded to avoid duplication and waste while providing effective protection of consumers.

#### "Established Business Relationship" Should be Narrowed

The Commission should more narrowly define "established business relationship". The Commission should define the term to require nothing less than a willingness, expressed in writing, by the consumer to have the specific business relationship of receiving unsolicited telemarketing calls from a specific caller. I have received countless calls from businesses from which I purchased one product or service (not from a telephone solicitation), only to receive calls soliciting my purchase of different products or service. When making my purchase, I certainly did not intend to consent to receiving telephone solicitations not directly related to the original purchase.

The Commission should make clear that an "established business relationship" cannot be assigned or lent to a different business. Upon receiving some calls from unknown persons and

inquiring as to how they got my number, I was informed that, “We got it from another company that you do business with, so it’s okay.” The sale or lease of a consumer’s number to a different business should not be deemed to be the establishment of a business relationship between the consumer and the buyer of the consumer’s personal information. Similarly, the Commission should determine that the prior express invitation or permission which a consumer or business gives to one person to make a telephone call or to send a fax does not constitute invitation or permission to any other person.

#### A Fresh Look at Technology

Statutes must constantly be reinterpreted to respond to changes in technology. In light of substantial changes in technology, the Commission should take a fresh look at the provisions of 47 U.S.C. §227(b)(1)(C), which prohibit any person from using “any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.” Not only have changes occurred in telemarketer and telephone network technology, but there has been an overwhelming change in the nature of the telephone customer premises equipment which is connected to the network since 1991. In light of those changes, the Commission should define a “telephone facsimile machine” as including any computer which is connected to a telephone line. Such a receiving computer is, in every way, the functional equivalent of a mechanical fax machine, reproducing the same textual and graphic information as was entered into the transmitting computer.

Congress clearly intended to stop the consumer harassment and adverse economic effect which was resulting from unsolicited advertising fax messages in 1991. Today's home and business computer, connected to the internet via a public switched network telephone line, serves exactly the same function as the mechanical fax machine which was in use in 1991. By this simple updating of its interpretation of the statute, the Commission can easily stop the harassment and economic waste which is currently imposed on both business and consumers by unsolicited facsimile advertising via internet e-mail.<sup>5</sup>

I have been using the internet daily since 1995. During that time, my e-mail address has been captured, distributed, sold and resold countless times. I currently receive about 60 unsolicited facsimiles of advertising messages — e-mailed “spam” — each day, and the quantity has risen by at least 20 percent over the past six months.<sup>6</sup> They arrive sporadically throughout the day. Because I cannot take the risk of failing to respond promptly to a solicited business e-mail message, I must download every message as soon as I am alerted to its availability. This results in the continual interruption of both my business and personal activities. The burden

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<sup>5</sup> Because the TCPA provides for regulation of only telephone usage, the suggested re-regulation would leave telemarketers free to send unsolicited facsimile messages to computers which are connected to broadband internet service providers. Thus, the suggested, limited regulation of place and manner would not unreasonably impair a telemarketer's coinmercial speech rights.

<sup>6</sup> These outrageous telemarketers daily accost me with offers to grow hair on a brand new credit card, give me a bigger bust to evade my debts (legally!), help me quit smoking toner cartridges, enjoy a Disney vacation with incredible lolitas, save 75 percent on a Ukranian mail-order bride (today only!), and increase my mortgage rate by **up** to three inches in just two weeks.

which the distribution of unsolicited facsimile advertising to computers connected to telephone lines places on interstate commerce and on the time of consumers is inestimable but clearly enormous and too large for the Commission to ignore. To carry out Congress's clear intent, the Commission should reinterpret Section 227(b)(1)(C) of the Act to prohibit the sending of unsolicited advertising messages to any computer which is connected to a telephone line.

#### Enforcement Should Actually Be Available to Consumers

The Commission requested "comment on what effect its case-by-case analysis has had on the number of unsolicited faxes sent to consumers". As a matter of fact, the Commission has not engaged in case-by-case analysis of unsolicited faxes. On February 20, 2001, the Commission released a public notice, "FCC Reminds Consumers About "Junk Fax" Prohibition" (DA 01-462) (copy attached as Exhibit II), wherein the Commission stated that "Consumers who have received unsolicited fax advertisements are encouraged to contact the Commission regarding the incident(s). Consumers can file a complaint by completing our on-line Consumer Complaint Form." Relying on the Commission's invitation and encouragement, I filed a series of complaints concerning unsolicited faxes during 2001, only to be informed after substantial effort to document and file the complaints that the Commission did not enforce its rules in individual cases, see, Exhibit III. Rather than holding my filings for inclusion in its FAX.COM investigation, the Commission returned them to me in their entirety. To avoid such consumer disappointments with respect to both voice and fax telemarketing, the Commission should adopt only rules which it is prepared to enforce in individual cases. In short, please don't tease me again. To reduce the



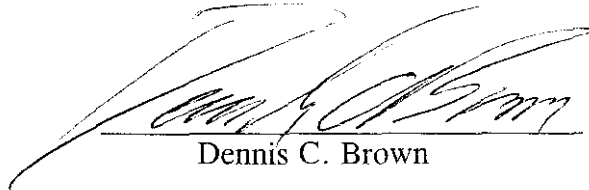
burden of adjudicating individual cases, the Commission must adopt tough rules which are more broadly effective than its current TCPA rules.

The Commission requested comment on the statutory private right of action. The Commission should recognize that, for several reasons, the statutory right of action is useful only in egregious cases wherein the complainant can show multiple violations. The statutory damages of no more than \$1,500 are too low for any but the most litigious to pursue and the statute imposes an exceptionally heavy burden of proof on the plaintiff, given the complainant's lack of access to the required facts. Given the ineffectiveness of the private right of action, the burden is on the Commission to adopt effective rules to protect telephone consumers.

### Conclusion

For all the foregoing reasons, I respectfully request that the Commission adopt the effective rules suggested herein which will allow me to take a single effective action to stop commercial telemarketing calls to me for the next ten years and which will bring an end to advertisers' abuse of internet e-mail.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis C. Brown", is written over a horizontal line.

Dennis C. Brown  
126/B North Bedford Street  
Arlington, Virginia 22201  
7031525-9630

Dated: December 6, 2002

## **EXHIBIT I**

**From:** "Dave" <nocall\_listing@netzero.net>  
**Subject:**  
**To:** <d.c.brown@

8/19/2002 2:46 PM



# ***NATIONAL TELEMARKETING NO-CALL LIST***

**The most you will ever get for your money!**

*Relax when you get home!*

*Sign up now! National No-Call telemarketing List. We will provide lists to the out of state telemarketers that are calling cross country.*

*Stop those harassing phone calls today. Send \$5.00 (Check, Money Order or Cash) for each residential phone number you want on our no-call List for 3 years before you need to renew your listing.*

*Our lists are updated quarterly and available ~~for~~ the telemarketing businesses.*

Business telephone numbers cannot be registered for this list.

**WHEN WILL THESE CALLS STOP?**

Lists will be updated for telemarketers on a quarterly basis beginning April 2002. Within 60 days of the date your number appears on a published list, you should stop receiving tele-marketing calls. If you continue to receive telemarketing calls after the 60th day, contact the PUC or the Office of the Attorney General.

### **ARE THERE EXCEPTIONS TO THE RULES FOR TELEMAKKETERS?**

Yes. Telemarketers may contact customers:

- with whom they have an established business relationship;
- if the customer requests contact;
- to collect a debt;
- on behalf of a non-profit organization or charity if the call does not meet the definition of a “telephone solicitation”

by attempting to make a sale or gather information that will lead to a sale.

- if the telemarketer is a state licensee (for example -insurance or real estate agent, etc.) and:
  - the call is not made by an automated device; the solicited transaction is completed with a face-to-face presentation to
  - finalize a sales transaction and make payment;
  - the consumer has not previously told the licensee that the consumer does not wish to be called.

Fill in blanks, print and mail

### **Nation Wide “No Call Lists” Residential Number Registration**

Mail the completed form to:

**F W Marketing**  
**3749 NE 28th Street Unit #20**  
**Haltom City, Tx 76111-5196**

To successfully register, you must include all required information (indicated by \*)

#### Applicant Name/Address

"First Name: \_\_\_\_\_ MI: \_\_\_\_\_ \*Last Name: \_\_\_\_\_  
 \*Address 1: \_\_\_\_\_  
 Address 2: \_\_\_\_\_  
 \*City: \_\_\_\_\_ \*State: \_\_\_\_\_ \*Postal Code: \_\_\_\_\_  
 Email: \_\_\_\_\_

#### Telephone Number to Register

\*Telephone Number: \_\_\_\_\_ (Include Area Code. One telephone number per application.)

"Residential Subscriber Name/Address (check the box or provide name/address below)

☐ Same as Applicant

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last Name: \_\_\_\_\_  
 Address 1: \_\_\_\_\_  
 Address 2: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Postal Code: \_\_\_\_\_

#### Payment Information

Cash/Check/Money Order made payable to: "F W Marketing"

*This information will be keep on file for 3 years. None of your Informa  
 will be sold or passed on without your written permission.*

This ad is being sent in compliance with Senate bill 1618, Title 3, section 301. Here is a more detailed version of the legal notice above: This message is sent in compliance of the new e-mail bill: SECTION 301. Per Section 301, Paragraph (a)(2)(C) of S. 1618, Further transmissions to you by the sender of this email may be stopped at no cost to you by sending a reply to this email address with the word "remove" in the subject line.

## **EXHIBIT II**



# PUBLIC NOTICE

Federal Communications Commission  
445 12th St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Fax-On-Demand 202 / 418-2830  
TTY 202 / 418-2555  
Internet: <http://www.fcc.gov>  
[ftp.fcc.gov](http://ftp.fcc.gov)

DA 01-462  
February 20, 2001

## FCC REMINDS CONSUMERS ABOUT SUNK FAX PROHIBITION

The Telephone Consumer Protection Act of 1991 (TCPA) and Federal Communications Commission (Commission) rules prohibit the use of a telephone facsimile machine, computer, or other device to send unsolicited advertisements to telephone facsimile machines.<sup>1</sup> The Commission is authorized to take enforcement action against companies that send so-called "junk faxes" and encourages consumers to inform the Commission if they have received such faxes.

An unsolicited advertisement is defined as any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.<sup>2</sup> The prohibition applies to unsolicited advertisements transmitted to both businesses and residences. The mere distribution or publication of a fax number does not confer an invitation or permission to transmit advertisements to a particular fax machine. An established business relationship, however, demonstrates consent to receive fax advertisement transmissions.<sup>4</sup> The Commission's rules further require that any message sent to a fax machine must clearly mark on the first page or on each page of the message the date and time the transmission is sent, the identity of the sender, and the telephone number of the sender or of the sending fax machine.

The Commission has taken numerous enforcement actions against companies for violations and suspected violations of the TCPA's prohibition against unsolicited fax advertisements. To date, the Commission or the Enforcement Bureau have issued 39 citations, and proposed or issued five fines in response to consumer complaints, totaling more than \$1.5 million. Detailed information on the Commission's enforcement of the TCPA is available at [www.fcc.gov/eb/tcd/ufax.html](http://www.fcc.gov/eb/tcd/ufax.html).

Consumers who have received unsolicited fax advertisements are encouraged to contact the Commission regarding the incident(s). Consumers can file a complaint by completing our on-line Consumer Complaint Form at [www.fcc.gov/cib/ccformpage.html](http://www.fcc.gov/cib/ccformpage.html) or by sending a letter summarizing the

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<sup>1</sup> 47 U.S.C. §27(b)(1)(C); 47 C.F.R. §4.1200 (a)(3).

47 C.F.R. §4.1200(f)(5)

<sup>3</sup> *Id.*

<sup>4</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 Memorandum Opinion and Order*, 10 FCC Rcd 12391, 12408, ¶7 (1995).



complaint to Federal Communications Commission, Consumer Information Bureau, Complaints, 445 12th St., SW, Washington, D.C. 20554. Consumers can file complaints via telephone by calling the Consumer Information Center at 1-888-CALL-FCC. Consumers may be required to provide documentation in support of their complaints.

Consumers may also file TCPA complaints with their state authorities or bring a private suit in an appropriate court of their state. Consumers can bring private suits to enjoin the unlawful conduct and either recover the actual monetary loss stemming from the TCPA violation or receive up to \$500 in damages for each violation, whichever is greater. The court may increase damages to \$1,500 per violation if it finds that the defendant willingly or knowingly committed the violation.

Enforcement Bureau contacts: John Winston at (202) 418-7450, and Yanic Hardie at (202) 418-7440.  
Consumer Information Bureau contact: Arthur Scrutchins at (202) 418-2184.

## **EXHIBIT III**

**Federal Communications Commission  
Consumer Information Bureau  
Consumer Information Network Division  
445 12<sup>th</sup> Street, S. W., Room 5A729  
Washington, D.C. 20554**

Dennis C Brown  
126/B N. Bedford Street  
Arlington, VA 22201

JUN 22 2001

Dear Dennis Brown:

We are in receipt of your complaint concerning unsolicited telemarketing calls, violation of a do-not-call request, and or unsolicited facsimile transmissions. Although the Commission does not adjudicate individual complaints of this type, we do closely monitor such complaints to determine whether independent enforcement action is warranted.

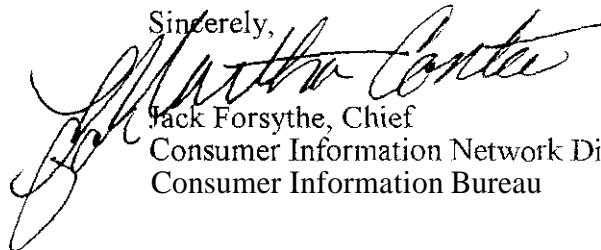
The Commission has adopted rules concerning unsolicited telephone marketing calls and unsolicited advertisements to facsimile machines in accordance with the Telephone Consumer Protection Act (TCPA). Complaints received by the Consumer Information Bureau regarding alleged TCPA violations are forwarded to the Enforcement Bureau, which may take enforcement action against alleged violator. The Commission has issued numerous citations against violators of the TCPA and the Commission's telemarketing rules. **These** enforcement actions can eventually result in monetary penalties of up to \$11,000 per violation.

We are enclosing a copy of the TCPA and the Commission's rules, along with information that explains the Commission efforts to protect consumers from receiving unsolicited telephone marketing transmissions to which they object, and the actions consumers can take to reduce the number of solicitation calls placed to their homes. You may also wish to note that, under the TCPA, consumers may bring a private lawsuit in state court to recover damages, if otherwise permitted by the state's laws or rules of court.

We invite you to visit the Consumer Information Bureau's Internet web site at <http://www.fcc.gov/cib>. In addition, you may wish to view the Enforcement Bureau's web site at <http://www.fcc.gov/eb/tcd/working.html> recent Commission TCPA enforcement actions. Information on telephone-related issues is also available to the public by calling the Commission's Consumer Center toll free at 1-888-CALL-FCC (TTY users: 1-888-TELL-FCC) or "Fax on Demand" at 202-415-2830. We also invite you to subscribe to our new e-mail service that will apprise you about consumer-related developments at the Commission. To subscribe, send an e-mail to [subscribe@info.fcc.gov](mailto:subscribe@info.fcc.gov) and in either the subject line or body of the message put: subscribe fcc-consumer-info firstname lastname (substitute your first and last name).

Please do not hesitate to contact us if you have further questions

Sincerely,



Jack Forsythe, Chief  
Consumer Information Network Division  
Consumer Information Bureau

Enclosures